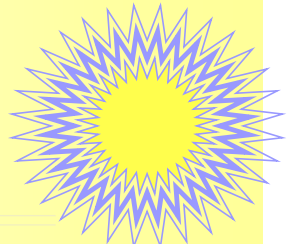




Issue No. 30

# Ethics News



May 2003


## Ethics and State Employees

(An online interview with Patricia Born, Part II)

*Ms. Born started her public service career as a revenue officer for the Internal Revenue Service in 1966. She went on to teach secondary school, to oversee social services contracts for Maine's Department of Human Services, to manage programs and finances for an area agency on aging, and to pursue a career in practical ethics at the Institute for Global Ethics in Camden, Maine, where she has been for the past eleven years.*

**E.N:** Do you believe that state employees follow the ethics rules out of fear of being caught or because they believe in doing the right thing?

**Ms. Born:** At the Institute for Global Ethics we believe that most people are motivated to be good; that is, they desire to do good rather than evil. So we see the glass as half full (which is really the only way one can look at it if one is looking for ways to improve things). What we're talking about here really is the role of compliance-based ethics compared to that of values-based ethics. Our goal is to promote values-based ethics where people do things out of an internal sense of duty and belief in core values. Compliance, what we see in state ethics laws, may be necessary, but they are not sufficient. . . .

	
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Where values are not commonly held or understood, and where citizens do not feel the internal moral obligation to evidence them, we often find that the law will rush in to fill the resulting void. Lord Moulton, a 19<sup>th</sup> century British jurist, once defined ethics as "obedience to the unenforceable." Obedience to the enforceable, he said, is simply obeying the law: If you exceed the speed limit, you will receive a summons and be fined. Obedience to the unenforceable, however, demands self-regulation based on perceived moral principles. State ethics laws are about obedience to the enforceable. Codes of ethics, on the other hand, are about obedience to the unenforceable.

Common values are not only a starting point for making ethical decisions. They also are important to identifying goals, defining objectives, creating a plan of implementation and evaluating results along the way. We must ask, "Is this goal/plan/result consistent with our stated values?" Even when we may disagree as individuals on, for example, the tactics of busing minority children to other school districts, we can probably agree on the value of equal opportunity as a cornerstone to quality education.

I believe that state employees—on the whole—are motivated to work for the state because of the good works it accomplishes, and they want to go home at the end of the day and be able to say they have made a contribution. At least that is how I have always felt in my 30 years working in the public arena. Public administrators Barry Posner and Warren Schmidt have written, "In turbulent times, values give a sense of direction amid conflicting views and demands."

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## Appeal Overruled by Superior Court

A former vocational rehabilitation counselor with Family and Social Services Administration petitioned the Marion County Superior Court to review actions taken against him by the Indiana State Ethics Commission on August 31, 2000. The Commission found the former counselor in violation of the gift rule, 40 IAC 2-1-6(a) and conflict of interest, 40 IAC 2-1-9(g) when he engaged in sexual behavior with a former client. ([See, Ethics News, May 2001 issue: Public Hearing](#)) The Commission recommended that the former counselor be terminated from his employment with the state and that he be sanctioned with a fine of \$10,000.

In its review of the above actions, the Court affirmed on March 6, 2003, the decision of the Ethics Commission. The former counselor failed to prove that the actions of the Commission “were in any way arbitrary or capricious, or an abuse of discretion or contrary to the law or the evidence.”

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## 02-C-25 Conflict of Interest

An employee with the State of Indiana submitted an agreed settlement, which was approved by the State Ethics Commission on March 18, 2003. In the settlement, the employee agreed to submit his resignation from employment with the State on or before February 28, to be effective April 1, 2003. The employee further agreed to never again seek employment with or be employed by the State of Indiana. In addition, the employee agreed to pay a civil penalty of \$10,000. These sanctions were agreed upon as a result of the employee’s violation of [40 IAC 2-1-9\(f\) \(g\)](#).

Over a period of several years, the employee repeatedly accessed websites from his state computer that pertained to inappropriate topics not related to the conduct of state business. The employee excessively interacted with individuals via electronic mail on subjects that did not relate to state business. The employee also used his state computer for other functions such as playing computer games on state time that were in no way related to state business.

The employee also acknowledged that, for at least the past few years, he had frequently claimed on his official state time sheet known as form A-4, that he had worked 7.5 hour days, when in fact, he had not been present in his office and was not engaged in any state business during those alleged working hours.

In 2002, the employee was absent from work for at least 31 days but reported that he was on duty.

The employee further agreed to the following sanctions: refraining from accessing the Internet from his state computer for non-state purposes and from participating in non-state business during state working hours.

The employee was furnished with a copy of the State Ethics Commission policy on the collection of fines and understands that his wages and/or retirement benefits are subject to garnishment for violation of said policy.

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## **Case No. 02-C-04, Conflict of Interest**

On February 13, 2003, the Commission accepted a proposed Agreed Settlement in which a state deputy commissioner agreed to accept financial responsibility for state resources used regarding faxes sent to her via her agency's fax machine. (40 IAC 2-1-9[f])

The state deputy commissioner had provided her state business card to employees of a catering business and a real estate company while conducting personal business with the two entities. Such personal business was conducted on the deputy commissioner's own time.

After giving her state business card to the two entities, ten pages of information from the catering business addressed to the deputy commissioner arrived at her office via the agency's fax machine.

Two months later, six fax pages from a title company, addressed to the deputy commissioner, regarding the purchase of her home, arrived via her agency's fax machine.

The deputy commissioner had no recollection of requesting, receiving or having possession of the facsimiles. It is unknown whether the faxes were sent because the deputy commissioner provided her business card to the businesses or whether their representatives obtained the agency fax number through other means.

While the deputy commissioner denied violating any provision of the ethics code, she is willing to accept financial responsibility for the state resources that were used regarding the faxes.

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## **Case No. 02-C-25, Conflict of Interest**

An employee with the State of Indiana submitted an agreed settlement, which was approved by the State Ethics Commission on March 18, 2003. The employee admitted to misusing her state computer; sending non-work related emails; and claiming hours on her time sheet (known as form A-4) that she did not work. The employee was absent from work for at least 7 days in 2002, but reported that she was on duty. This action resulted in a violation of 40 IAC 2-1-9(g). Her use of a state computer for purposes other than state business was in violation of 40 IAC 2-1-9(f).

Under terms of the agreement, the employee agreed to pay a civil penalty of \$1,000; to refrain from accessing the Internet from her state computer for non-state purposes; to refrain from participating in non-state business during state working hours; and to accept a written reprimand from her supervisor.

Commission meetings are open to the public and held the  
second Thursday of the month.  
Normal starting time is 10:00 a.m.

## Staff Advice

This article briefly reviews questions recently addressed by the Ethics Commission staff. The advice is not intended as a comprehensive analysis of the issue raised. For more information on whether and how this information may apply in another situation, contact your agency Ethics Officer or the State Ethics Commission.

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**Q.** Can a state employee use his state computer to file taxes online?

**A.** As long as the filing is conducted on the employee's own time and not during the employee's work hours.

**Q.** Can an employee or group of employees give gifts to their superior?

**A.** There is no prohibition for giving gifts to a superior. However, employees should not feel pressured to give gifts or contribute to group gifts. An employee may collect a recommended contribution, as long as he/she advises other employees that they are free to contribute less or nothing at all.

**Q.** Can a state employee who was not involved personally or substantially in the awarding of a contract by his/her agency go to work for the company that was granted the contract?

**A.** Since the employee had no influence over this particular company that received the contract from his/her agency, the employee may work for the company. The employee is bound from revealing any information of a confidential nature to his/her new employer.

**Q.** Can a state employee attend a sporting event sponsored by a former contractor with her agency?

**A.** Since the contract has ended and the contractor would not be contracting with her agency again, she may attend on her own time.

**Q.** Can a state employee accept an appointment to a state Board that deals with manufactured homes?

**A.** If the employee has no discretionary authority over matters that regulate manufactured homes, he may accept the appointment. Furthermore, the following conditions apply:

- The separation of his activities must be consistently maintained (otherwise he could be found in violation of the moonlighting rule).
- He must be aware of any potential for situations involving the Board that might deal with confidential agency information.
- He must avoid participating in his official capacity in any decisions concerning the Board.

Accepting a per diem for attendance at the Board meetings does not violate an ethics rule. However, the State Board of Accounts and the Personnel Department may have concerns. It is also recommended that the employee consult with his supervisor to avoid any misunderstanding about his agency's rules.



## Ethics Survey

### From the Director's Chair

I would like to thank everyone who participated in our March survey. We received some excellent comments and I would like to share those with you in this issue. The following is a sample of some of the comments (edited for space) with my response following.

~ Tim McClure, Director

**Comment:** I sent an email to the State Ethics Commission and did not receive a response.

**Response:** We make every effort to answer all of our email and other correspondence. We have found, however, that some email ends up in cyberspace. If you make an inquiry, and don't receive a response, please call or send another email.

**Comment:** The State Ethics Commission could better serve state employees by not focusing just on the peon employees, but on management's behaviors.

**Response:** Since January of 2002, we have adjudicated cases involving two deputy commissioners, a former adjutant general, two administrative law judges, two county DFC directors, a head pharmacist at a state hospital, the former director of the Indiana Principal Leadership Academy and other supervisory personnel. These people have had to pay fines and endure the embarrassment of having their situations exposed — sometimes in the newspaper.

**Comment:** Include more questions and examples of situations in the newsletter.

**Response:** We will incorporate more questions and examples in both our newsletter and in a new training program we will be offering soon. We will travel to present the program.

**Comment:** You folks do a great job.

**Response:** One free pass for an ethics violation of the comment maker's choosing! (Just kidding!)

**Comment:** I think the whole thing is much ado about nothing. No Avon books in the break room. Like who makes a fortune selling Avon?

**Response:** At first glance the selling of Avon at work may seem innocent and insignificant. However, distributing books, taking orders and delivering products takes time and may be distracting to other employees. Anyone who wishes to sell beauty products or other similar items may do so on their own time and away from work. And, to answer your question, Andrea Jung, the CEO and chairperson of Avon. The company made \$193 million in profits last year.

**Comment:** I realize that there is a lot of nepotism. I would appreciate it if (name omitted) would not have his friends hired by the state.

**Response:** The state nepotism law applies to close family relationships like, mother, father, sister, brother, in-laws and aunts and uncles. It also applies only to the supervisor-subordinate relationship.

**Comment:** This is a terrible survey. Hasn't anyone had any training on even doing a survey?

**Response:** No.

## 2003 Ethics Classes

### Ethics Orientation (10:00 - 11:00 a.m.)

June 17 (TC-1)  
August 12 (TC-1)  
October 8 (TC-1)  
December 10 (TC-1)

### Supervisors & Managers (10:00 -12:30 p.m.)

June 25 (TC-2)  
August 20 (CC-A)  
October 16 (CC-A)  
December 11 (CC-C)

Classes are in the State Conference Center or Training Center  
Indiana Government Center South, 402 W. Washington St., Indianapolis, IN

To register, call (317) 232-3850 or visit our  
Web site at [www.ethics.IN.gov](http://www.ethics.IN.gov)

## Coming Soon!



In cooperation with the Communications Department at Ball State University, the State Ethics Commission is in the process of producing a new orientation video. A copy of the video will be given to every state office and agency for the purpose of training employees new to state government. The video may also be used as a refresher for those employees who have received ethics training.

The Ethics Commission will continue to offer orientation classes in the Indiana Government Conference and Training Centers. The Commission staff also is available to travel around the state to meet the needs of those agencies that have field offices.

Phil Klein, a junior at Ball State University, is the director and editor of the project. Students are required to do outside projects at no cost to the client. The actors, all from state government, were chosen by the Commission. A special note of thanks for their hard work goes out to: Cynthia Brandon-Harris (FSSA); Kim Garver (IPLA); Renaud Tabard (Attorney General's Office); Tim Underwood (LEA); Kraig Price (IDOA); and Georgeanna Orlich (Attorney General's Office). Tim McClure, Director of the State Ethics Commission, serves as the narrator.

Special thanks to Jim Lewis, Supervisor of the Land Management Office, where the video was shot.



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